

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CACR07-719

JANUARY 23, 2008

ALISA C. STUART	APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR2006-2587]
V.		HON. JOHN W. LANGSTON, JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

Alisa Stuart was charged with aggravated assault and first-degree domestic battering after she stabbed her boyfriend. A Pulaski County jury found her not guilty of the assault but guilty of the battering, and she was sentenced to a five-year term of imprisonment. Stuart contends on appeal that the trial court should have granted her motions for a directed verdict because the State offered insufficient proof that the victim suffered a “serious physical injury.” We hold that the evidence was sufficient regarding this element of the crime, and we affirm the conviction.

A person commits domestic battering in the first degree if, with the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon. Ark. Code Ann. §

5-26-303(a)(1) (Supp. 2007). “Serious physical injury” means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. Ark. Code Ann. § 5-1-102(21).

Here, the State’s evidence included testimony by the victim, Shea Chatman; a neighbor, Kelly Irvin; and Dr. John Fredrick, who treated Chatman in the emergency room. Chatman testified that, on the evening of May 27, 2006, Stuart’s son tried to separate Chatman and Stuart while they argued and moved through the house. Chatman stated that he did not know that Stuart had grabbed a knife when they were in the kitchen. He testified that he turned his back as he tried to get out of the house, “felt a pinch,” and did not know that he had been stabbed until he was outside and saw that his clothes were “full of blood.” He stated that he ran to Kelly Irvin’s house, told people there that he had been stabbed, passed out on the floor, and knew nothing more until he was on his way to the hospital by ambulance.

In Chatman’s testimony, given approximately nine months after the stabbing, he said that he still had a scar on his back “up under” his lung. He stated, “It be messing with me, you know, at work because I be working around a whole lot of chemicals and stuff. So, it’s you know, my breathing, it never going to be the same.” He said that he was hospitalized about two days, was off work at Cracker Barrel for two weeks, went back to work, and had to miss another week because his job required lifting dishes and other items. Regarding his treatment and healing, he stated:

They didn't sew me up, they . . . kind of just let it heal on its own. They didn't want to put no staples or no stitches or nothing in it. They just kind of like, you know, healed on its own. This wound got part of my lung, too. It did mess with my breathing for awhile.

Chatman said that it "took a little minute" for his lung to get back to "working normal" but that he was "100% normal" on the date of his testimony.

Kelly Irvin testified that she answered a banging on her door on the night of May 27. She said that Chatman, who was beating on the door, was hysterical and said that he had been stabbed; then "blood started gushing from behind" and he passed out on the floor. Irvin testified that her husband used towels to keep pressure on the wound while the ambulance was called. She said that the injury was located on Chatman's back, "closer to his lung part," and toward his left shoulder.

Dr. Fredrick testified that Chatman sustained a solitary stab wound that penetrated the back wall of the left chest near the shoulder blade. Dr. Frederick said that the wound was "just a couple of centimeters" and that he could not be certain that the lung had been penetrated. He testified that Chatman arrived at the hospital with a "needle decompression" in the chest wall that the EMTs had performed because of their supposition, based upon their field examination, that Chatman had a pneumothorax. Dr. Fredrick stated:

The concern at this point, is a, what we call a pneumothorax, which is air outside the lung, and if there is a tension component, meaning that this injury creates a one-way valve, . . . that lung can kind of force it to become compressed down. And . . . so they'll stick a needle through the chest wall in order to kind of let that pressure escape.

He explained that, in order to prevent a collapsed lung, the needle was replaced in the emergency room with a tube to allow trapped air to escape from the space between the lung and chest wall. He further testified:

And like I said, that keeps that lung inflated. If those steps aren't taken, this is a situation where this could lead to complications, possibly risk of death.

Tension pneumothorax is a very serious injury, and it can complicate, it can prevent adequate oxygenation. It can prevent, compromise blood flow back to the heart. It's a very serious injury that can result in death. . . .

The recovery time for something like this, we put the chest tube in, and it's a matter of days generally before an air leak seals. Typically . . . there's an injury to the chest wall or the lining of the lung allowing air into the chest, and you wait for the body to naturally heal that injury, which, like I said, takes on the order of days. Sometimes it fails to seal. It can take weeks or may require an operation to close the defect.

In this case no further operation. This is probably like . . . 80 to 90% of the cases . . . the air leak will heal on its own.

He reiterated his testimony that the wound was "a fairly small laceration" in length and that "you'd have no idea of the depth penetration."

Serious Physical Injury

Stuart contends on appeal, as she did in her motions for a directed verdict, that Chatman's stab wound was not a "serious physical injury." *See* Ark. Code Ann. § 5-1-102(21). Noting his testimony that his lung returned to normal with only "a little minute" of recovery time, she argues that the wound caused no protracted impairment or disfigurement. She acknowledges that Chatman underwent medical "treatment" to prevent a collapsed lung and acknowledges Dr. Fredrick's testimony that a pneumothorax is a very

serious injury, but she asserts that there was no substantial risk of death because Chatman never actually suffered a collapsed lung or pneumothorax.

Whether a victim has sustained serious physical injury, as well as the question of temporary or protracted impairment, are issues for the jury to decide. *Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999); *Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003) (citing *Harmon v. State*, 260 Ark. 665, 543 S.W.2d 43 (1976)). The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Phillips v. State* 344 Ark. 453, 40 S.W.3d 778 (2001). The facts of a case may indicate that, regardless of making a recovery, a victim did in fact suffer a serious physical injury. See, e.g., *Brown v. State*, 347 Ark. 308, 65 S.W.3d 394 (2001) (rejecting appellant's argument that no serious physical injury occurred where the victim fully recovered after being hospitalized for nine days, undergoing surgery to remove a portion of her intestine, and enduring a colostomy).

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Price v. State*, 365 Ark. 25, 223 S.W.3d 817 (2006). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, the appellate court views the evidence in the light most favorable to the State, considering only the evidence that supports the verdict. *Id.*

The requirement of serious physical injury was met in *Bangs* where the victim sustained bruises on her forehead and face, blunt injuries to her scalp and the back of her

head, and two five-centimeter lacerations on her scalp that required staples. 338 Ark. at 521, 998 S.W.2d at 743. Here, there was evidence that Chatman passed out after being stabbed in the back near the left lung, that blood gushed from the wound, that he had difficulty in breathing as a result of the wound, that he missed three weeks of work because he could not lift, that medical personnel performed medical procedures that were deemed necessary to prevent a collapsed lung, and that Chatman had a scar on his back nine months later. We hold that the jury could have concluded from this evidence that Chatman sustained a serious physical injury. The conviction is therefore affirmed.

Affirmed.

GLOVER and VAUGHT, JJ., agree.